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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18
19 IRVIN CHEN,

20 Plaintiff,

21 v.

22 AVON PRODUCTS, INC.; and DOES 1
through 50, inclusive,

23 Defendants.
24

CASE NO. CV11-2285 GW (SHx)

**ORDER FOR PROTECTIVE
ORDER PURSUANT TO THE
PARTIES' JOINT STIPULATION**

25
26 Having reviewed the Joint Stipulation filed by the parties on August 15,
27 2011, and good cause appearing therefore, the Court hereby Orders:
28

1 1. The Parties to the above-captioned action have determined that certain
2 information to be produced in this action contains Confidential Information (as
3 defined below), the unauthorized disclosure of which would be detrimental to the
4 legitimate commercial or privacy interests of the Party producing such information.
5 Therefore, the Parties, through their counsel of record, hereby agree as follows:
6 This Stipulated Protective Order shall govern documents, electronically-stored
7 information, materials, depositions or other testimony, deposition exhibits,
8 interrogatory responses, responses to request for admissions, and other information
9 produced by the Parties (or third parties) in connection with this case. All such
10 materials and information shall be referred to as "Information."

11 **CONFIDENTIAL INFORMATION**

12 2. The following definition shall govern the interpretation and application
13 of this Order:

14 A. The term "Confidential" describes Information that contains
15 sensitive and nonpublic business or financial information, personal financial
16 information, sensitive and nonpublic personnel information, trade secrets, or other
17 confidential or proprietary commercial, research, or development information,
18 including but not limited to: (a) documents identifying individuals' social security
19 numbers or other sensitive, nonpublic personal information; (b) documents
20 identifying individuals' investments or other personal, nonpublic financial
21 information; (c) documents containing sensitive, nonpublic information about a
22 Party's clients or customers; and (d) documents containing sensitive, nonpublic
23 information concerning a Party's accounting, financial transactions, or proprietary
24 business methods.

25 3. Any Information produced by a Party to this litigation (the "Producing
26 Party") that such Party believes in good faith contains or comprises any
27 confidential, proprietary, commercially sensitive, or trade secret information may
28 be designated by the Producing Party as "Confidential" by marking or designating

1 the information in the manner provided in paragraph 4 of this Stipulated Protective
2 Order. In addition, a Party may also designate as “Confidential” any Information
3 that is produced or disclosed by any third party, provided that such Information
4 contains “Confidential” Information (as defined in paragraph 2) of the Party who
5 designates such Information (“Designating Party”). A Party may designate such
6 Information by sending written notice of such designation, accompanied by copies
7 of the designated Information bearing the “Confidential” stamp, to all other Parties
8 in possession, custody, or control of such previously un-designated Information.
9 Any Party receiving such notice and copy of the designated Information pursuant to
10 this paragraph shall, within thirty (30) days of receipt of such notice (or such other
11 time as may be agreed upon by the Parties): (a) destroy all un-designated copies of
12 such Information in its possession, custody, or control obtained in discovery in this
13 matter; or (b) at the Designating Party’s expense, return to the Designating Party all
14 un-designated copies of such Information in its possession, custody, or control
15 obtained in discovery in this matter. The preceding notwithstanding, a Party may
16 move for an Order designating certain information “Confidential” pursuant to
17 paragraph 9.

18 4. Any Confidential Information shall be designated “Confidential” by
19 the Producing Party or Designating Party by so stamping the material with the
20 appropriate legend. All depositions shall be designated “Confidential” for ten (10)
21 days from the receipt of the initial deposition transcript. During that 10-day period
22 (or further period to the extent mutually agreed upon by the Parties), any Party who
23 believes that portions of the deposition contain Confidential Information will mark
24 the portions of the deposition transcript containing such information as
25 “Confidential” and shall provide, by overnight mail, a copy of the deposition
26 transcript to all counsel. Only those portions of the transcript of the deposition
27 designated “Confidential” shall be so treated. All copies of deposition transcripts
28 that contain designated Information shall be prominently marked “Confidential” on

1 the cover, and if the portion(s) designated are filed with the Court, they shall be
2 filed in accordance with the procedure provided for in paragraph 8. Parties may
3 also designate deposition testimony as “Confidential” at the time deposition
4 testimony is provided.

5 5. Except as otherwise provided herein, Information designated as
6 “Confidential” pursuant to this Stipulated Protective Order, and any information
7 contained therein, and any notes, abstracts, or summaries made therefrom, shall not
8 thereafter be disclosed in any manner to anyone other than to the following: the
9 Parties herein (including their present and former officers and employees directly
10 involved in the prosecution or defense of this action), their respective outside or in-
11 house counsel (including partners, associates, paralegals, and clerical and support
12 personnel), the Parties’ experts and consultants, Court officials involved in this
13 action (including court reporters, persons operating video equipment at depositions,
14 and any special master or mediator appointed by the Court), deponents as set forth
15 in paragraph 7, and any mediator or other person presiding over formal alternative
16 dispute resolution sessions. All such “Confidential” materials shall be used solely
17 for the prosecution or defense of this action. If a Party wishes to disclose any
18 Confidential Information to any person not described in this paragraph, the Party
19 wishing to disclose the Information must provide the Designating Party five (5)
20 court days notice. However, each Party may disclose its own Confidential
21 Information without regard to this Protective Order, and such disclosure shall not
22 constitute a waiver of confidentiality.

23 6. Any person to whom Information designated “Confidential” may be
24 disclosed pursuant to paragraphs 5, except the Parties’ outside counsel (including
25 partners, associates, paralegals, and clerical and support personnel) and Court
26 officials involved in this action (including court reporters, persons operating video
27 equipment at depositions, and any special master or mediator appointed by the
28 Court), first shall be shown and shall read a copy of this Stipulated Protective Order

1 and shall agree in writing to be bound by its terms by signing a copy of the
2 confidentiality acknowledgment attached as Exhibit A. Counsel for the Party
3 obtaining such a person's signature on Exhibit A shall retain the original signed
4 document subject to further order of the Court. Such persons shall certify, under
5 penalty of perjury, that they will not use Information designated "Confidential" for
6 any purpose other than conducting this litigation. This provision shall not,
7 however, limit any Party's ability to use its own Confidential Information in any
8 way.

9 7. Counsel may show Information designated "Confidential" to a witness
10 at a deposition and examine that witness concerning the same provided that
11 examining counsel has a good faith basis for believing that the witness or deponent
12 may have information or testimony pertinent to the Confidential Information.
13 Examining counsel must, in the course of the deposition, inquire as to whether the
14 witness agrees to be bound by the terms of this Stipulated Protective Order. If the
15 witness does not so agree, then neither the witness nor his counsel may retain the
16 Confidential Information including, but not limited to, a copy of any pages of the
17 transcript of the deposition that are designated "Confidential." In the event of such
18 refusal by the witness, the reporter shall be instructed to give the witness written
19 notice when the transcript has been prepared, stating that the witness may inspect
20 the transcript and its exhibits in the reporter's office, and that if the original
21 deposition transcript is not signed within thirty (30) days after the date of the notice
22 (absent and contrary stipulation of counsel on the record), it will be used as if it had
23 been signed. The witness shall not be furnished with a copy of portions of the
24 deposition transcript or exhibits that have been designated as "Confidential." If the
25 witness does not sign the original deposition transcript within thirty (30) days after
26 the date of the written notice described in this paragraph (absent any contrary
27 stipulation of counsel on the record), the deposition transcript may be used as if it
28 had been signed.

1 8. The Parties agree to follow Federal Rule of Civil Procedure 5 with
2 respect to all materials marked “Confidential” pursuant to this Protective Order.

3 **GENERAL PROVISIONS**

4 9. The designation of Information as “Confidential” shall not be
5 considered conclusive or binding on the Parties, and such designation may be
6 contested at any time. The Party who objects to the designation of the Information
7 as “Confidential” shall give written notice of the objection. The Parties shall then
8 attempt to resolve the dispute informally and in good faith. If the Parties cannot
9 resolve the dispute informally, the Designating Party shall have ten (10) business
10 days from receipt of the written notice from the objecting Party made pursuant to
11 this paragraph, or the date the Parties agree that the dispute cannot be resolved
12 informally, whichever is later, to file a motion asking the Court to resolve the issue.
13 If the motion is not filed within this time, then the “Confidential” designation shall
14 be deemed waived. If the motion is timely filed, the Party asserting confidentiality
15 shall have the burden of proving that the Confidential Information is protected by
16 (a) a right to privacy or (b) trade secret or other confidential research, development,
17 or commercial information within the meaning of Rule 26(c)(7) of the Federal
18 Rules of Civil Procedure. Prior to the determination of such a motion, the disputed
19 Information shall be treated by the Parties as “Confidential.” If the motion is
20 granted in favor of the objecting Party then the prevailing Party may disclose the
21 Information.

22 10. If at any time prior to three (3) years following the final conclusion of
23 this lawsuit any Confidential Information protected by this Stipulated Protective
24 Order is subpoenaed or requested by any court, administrative or legislative body,
25 or person or entity, other than a Party to this action purporting to have authority to
26 require the production of such information, the Party to whom the subpoena or
27 other request is directed shall immediately give written notice thereof to any Party
28 which has designated such information as “Confidential” so as to advise such Party

1 of the need to promptly obtain a protective order or act to quash the subpoena. The
2 Party to whom the subpoena or other request is directed shall not produce the
3 Confidential Information until the Party seeking to maintain confidentiality has had
4 thirty (30) calendar days to obtain an appropriate order, unless required by law or
5 Court order.

6 11. If a party desires to use a Designating Party's Confidential Information
7 as an exhibit to a motion, it may do so only after filing the Confidential Information
8 under seal and/or in connection with a motion that the Confidential Information be
9 filed under seal.

10 12. Nothing contained herein shall prevent any Party from using
11 Information designated as "Confidential" at trial in this matter, provided that the
12 Party seeking to use the Information affords counsel for the Producing or
13 Designating Party at least five (5) court days advance notice of the intent to use
14 such Information. However, if such Information is to be used for impeachment at
15 trial, the Producing Party need not give the Designating Party five (5) court days
16 advance notice, but the Designating Party may make an oral motion for a protective
17 order at trial when such Information is offered.

18 13. Producing or receiving materials or otherwise complying with the
19 terms of this Stipulated Protective Order shall not:

- 20 a. Prejudice the rights of any Party to object to the production of
21 documents on any grounds, including an objection based on the
22 contention that the document is not subject to discovery;
- 23 b. Prejudice the rights of any Party to object to the authenticity or
24 admissibility of any document, testimony, or evidence subject to
25 this Stipulated Protective Order;
- 26 c. Prejudice the right of any Party to seek this Court's
27 determination whether particular information should be
28

1 produced or should be subject to the terms of this Stipulated
2 Protective Order;

3 d. Prejudice the rights of any Party to apply to this Court for a
4 further protective order relating to any Information; or

5 e. Prevent the Parties from agreeing in writing to alter or waive the
6 provisions or protections provided for herein with respect to any
7 particular Information and to seek Court approval for such
8 modification, if necessary.

9 14. This Stipulated Protective Order has no effect upon, and its scope shall
10 not extend to, any Party's use of its own Information.

11 15. The Parties and any other person subject to the terms of this Stipulated
12 Protective Order agree that this Court has and retains jurisdiction during and after
13 the termination of this action for the purpose of enforcing this Stipulated Protective
14 Order. The provisions of this Stipulated Protective Order shall, absent written
15 permission of the relevant Producing Parties or further order of this Court, continue
16 to apply for three (3) years after the final conclusion of this action, including
17 without limitation any appeals therefrom.

18 16. Within sixty (60) days after termination of this litigation, including any
19 appeals therefrom, the originals and all copies of Information designated as
20 "Confidential" shall, at the direction of the respective Producing or Designating
21 Parties, be destroyed or turned over to said Parties.

22 17. This Stipulated Protective Order shall, subject to Court approval, be
23 binding upon the Parties immediately upon the date of their respective signatures
24 hereto. By signing, each Party agrees to comply with the terms of this Stipulated
25 Protective Order and to be bound thereby. In the event that the Court does not enter
26 into the Proposed Protective Order based upon this Stipulation, the Parties shall in
27 good faith negotiate any terms which the Court finds objectionable.
28

1 18. In the event that additional persons become Parties to this action, they
2 shall not, absent Court order, have access to Information designated as
3 “Confidential” until the newly joined Party or its counsel of record confirms in
4 writing that it agrees to be bound by the terms of this Stipulated Protective Order.

5 19. The Parties hereby declare that: (a) this Stipulated Protective Order is
6 appropriate because the substantial volume of Information to be produced makes a
7 document-by-document review impracticable and unduly burdensome, and because
8 much of the Information to be produced includes confidential business information
9 and confidential third-party information; (b) the Parties have cognizable interests in
10 the materials sought to be protected, including but not limited to potentially highly
11 sensitive trade secret and other highly confidential proprietary business
12 information; and (c) disclosure of the material sought to be protected may cause
13 serious harm to Defendants by exposing this confidential information to
14 competitors.

15 20. The inadvertent production of information that is subject to a claim of
16 any privilege or of protection as trial-preparation material shall not constitute a
17 waiver of any privilege or other protection, provided that the Producing Party
18 notifies the receiving party in writing of the inadvertent production as soon as
19 practicable following the Producing Party’s discovery of the inadvertent
20 production. Following the Producing Party’s written notice of the inadvertent
21 production, the receiving party shall promptly return, destroy, or delete from its
22 databases all copies of the specified information and shall make reasonable efforts
23 to retrieve the information if the receiving party previously provided the
24 information to third parties. The receiving party shall not assert a claim or
25 argument in this or any other court or legal proceeding that the Producing Party’s
26 act of inadvertently producing the information constituted a waiver of the
27 Producing Party’s privilege or other protection over the information. If there is a
28 disagreement as to whether the specified information is privileged or subject to

1 protection, the receiving party may present the information under seal to the Court
2 for a determination. Until the Court makes a determination of the privileged or
3 protected status of the information, the receiving party shall not use in any way
4 (including, but not limited to, using the information in depositions or at trial) nor
5 disclose the information to other parties.

6 21. Entering into, agreeing to, and/or producing or receiving Information
7 designated as "Confidential" or otherwise complying with the terms of this
8 Stipulated Protective Order shall not operate as an admission by any Party that any
9 particular information or material designated as "Confidential" contains or reflects
10 trade secrets, proprietary or commercially sensitive information, or any other type
11 of confidential information.

12 22. Absent a specific order by a Court of competent jurisdiction, and
13 except as provided below, all Information produced in connection with this
14 litigation may be used solely in connection with the above-captioned action, and
15 shall not be used for any business, proprietary, or commercial purpose.

16 23. All Parties participated in drafting this Stipulated Protective Order.
17 Thus, the Parties agree that no particular party can be designated as the drafting
18 party against whom any language can be strictly construed.

19
20 **SO ORDERED.**

21 DATED:

22 August 19, 2011



23
24 **THE HONORABLE STEPHEN J. HILLMAN**
United States Magistrate Judge

EXHIBIT A

CONFIDENTIALITY ACKNOWLEDGMENT

I, _____ declare:

1. I reside at _____.

2. I have read and understand the Stipulated Protective Order to which this Exhibit A is annexed, and I attest to my understanding that access to information designated "Confidential" may be provided to me and that such access is pursuant to the terms and conditions and restrictions of the Stipulated Protective Order. I agree to be bound by the terms of the Stipulated Protective Order.

3. I will not divulge to persons other than those specifically authorized by the Stipulated Protective Order any information obtained pursuant to the Order, and will not copy or use such information except for the purposes of this litigation and only as expressly permitted by the terms of the Stipulated Protective Order. If I fail to abide by the terms of the Stipulated Protective Order, I understand that I may be subject to sanctions under the contempt power of this Court.

4. By signing below, I hereby agree to submit to the jurisdiction of the courts of the State of California for resolving any and all disputes regarding the Stipulated Protective Order and this Confidentiality Acknowledgement. I further agree that any and all disputes regarding the Order and this Confidentiality Acknowledgement shall be governed by the laws of the State of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ at _____.

(Signature)

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